

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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September 6, 2013

Application Summary

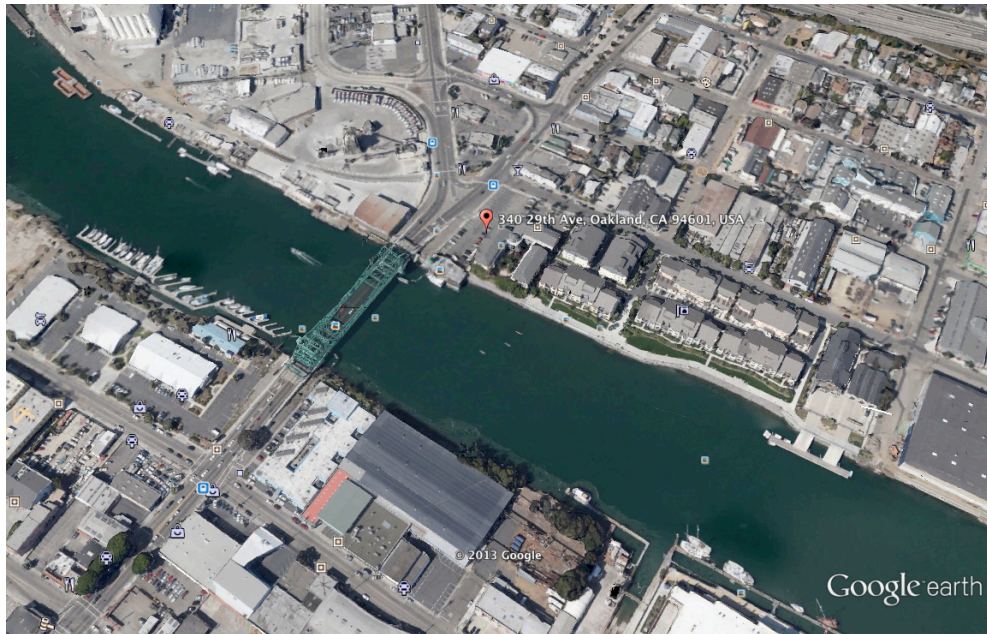
(For Commission consideration on September 19, 2013)

Number: BCDC Permit Application No. 2013.002.00
Date Filed: August 13, 2013
90th Day: November 11, 2013
Staff Assigned: Erik Buehmann (415/352-3645 erikb@bcdc.ca.gov)

Summary

Applicant: Chris Zimmerman

Location: The proposed project is located at 340 29th Avenue, in the City of Oakland, southeast of the Park Street Bridge along the Oakland Estuary. A restaurant formerly occupied the site and was destroyed by fire in 2010. Currently, the site consists of a parking lot and unused, dilapidated pier over the Bay.



Making San Francisco Bay Better

Project: The project involves constructing a four-story, 41-unit senior co-housing facility and private patio adjacent to a 27- to 32-foot-wide public shoreline promenade. Approximately 8,263 square feet of the 18,933-square-foot proposed building would fall within the 100-foot shoreline band. A 2,522-square-foot pier largely over the Bay would also be reconstructed to provide additional public access area. A 650-square-foot floating dock would also be placed for private use by the residents of the co-housing facility.

Issues Raised: The staff believes that the application raises two primary issues: (1) whether the proposed fill for the project is consistent with the McAteer-Petris Act and the Bay Plan policies on fill, including policies on safety of fills and sea level rise; and (2) whether the proposed public access improvements are consistent with the Bay Plan policies on public access, including policies on sea level rise and appearance, design, and scenic views.

Background

The pile-supported pier was built prior to the establishment of the Commission, and appears in photographs as early as 1959. In 1969 a permit was issued for replacing most of the pilings supporting the pier and for constructing a restaurant on the refurbished pier (BCDC Permit No. M1969.005.00). The work on the pilings to support the restaurant would have substantially extended the life of the structure. The applicant's proposed project includes complete replacement of the decking and some support structures on the pier, again substantially extending the life of the structure. As a result, BCDC staff has concluded that the proposed work on the pier would constitute new bay fill within BCDC's Bay jurisdiction even though the pier was originally built prior to the establishment of BCDC in 1965.

Over the years the landward portion of the proposed project site was used as a parking lot. The pier supported a restaurant, most recently occupied by "Tiki Tom's." In 2010, a fire burned the entire restaurant structure and damaged the top decking of the pier. Since the fire, the pier and floating boat dock have remained unused and in a degraded condition.

The pier is located over the Oakland-Alameda Estuary on property owned by the United States Army Corps of Engineers (Corps). The Corps has issued a lease to the applicant for renovation of the pier and floating boat dock. The lease is for a five-year term, renewable four times for a total of 25 years. Under the conditions of the Corps lease, the applicant may provide the pier for public access but must retain the floating dock for private use.

Project Description

Project Details:

The applicant, Chris Zimmerman, describes the project as follows:

In the Bay:

1. Renovate, use, and maintain an approximately 1,963-square-foot portion of a 2,522-square-foot pile-supported pier for public access by replacing and repairing the decking and some support structures and removing approximately 194 square feet of existing dilapidated decking; and
2. Remove an approximately 1,065-square-foot floating boat dock and install, use and maintain a new 650-square-foot private floating boat dock.

Within the 100-foot shoreline band:

1. Construct, use, and maintain an approximately 3,210-square-foot portion of an 18,933-square-foot residential structure;
2. Construct, use, and maintain an approximately 1,649-square-foot private terrace adjacent to the public access promenade;
3. Construct, use, and maintain an approximately 2,351-square-foot 27- to 32-foot-wide public promenade along the shoreline;
4. Install, use, and maintain approximately 463 square feet of landscaping as part of the public access area;
5. Renovate, use, and maintain an approximately 559-square-foot portion of the 2,522-square-foot pile-supported pier for public use;
6. Construct, use and maintain a 108-foot-long, pile-supported retaining wall to support the public promenade; and
7. Improve, use, and maintain an approximately 1,348-square-foot area at the shoreline edge of 29th Avenue, owned by the City of Oakland with an extension of the promenade, new paving and sidewalks, bollards and landscaping.

Bay Fill:

The proposed project would replace approximately 1,354 square feet of existing, pile-supported Bay fill. The proposed project would reduce the size of the existing pier by removing approximately 194 square feet of decking from the edges of the pier. The decking and some support structures beneath the pier would be completely replaced, totaling approximately 1,963 square feet of new bay fill, but would result in a net reduction in the area of the Bay covered at the project site. The applicant states the existing pilings are in good condition and does not anticipate the need to replace them. Therefore, no pile-driving or in-water work will be required to rehabilitate the pier. An existing 1,065-square-foot floating boat dock would be removed and replaced with a 650-square-foot floating boat dock.

Phoenix Commons Fill Totals			
	Removed	New	Total Replacement Fill
Pile-Supported (sf)	194	1,963	1,769
Floating (sf)	1,065	650	-415
Sub Total (sf)	1,259	2,613	1,354

Public Access:

There is currently no public access at the site. The applicant proposes to construct an 87-foot-long (2,351-square-foot) public access promenade paralleling the Oakland Estuary. The promenade would range between approximately 27 and 32 feet wide. The project would include approximately 463 square feet of public access landscaping. The applicant proposes to improve the terminus of 29th Avenue by adding removable bollards, four trees in removable planter boxes, and by extending the public access promenade west across this City-owned street. The applicant would also repave the asphalt on a portion of the street and provide an eight-foot-wide sidewalk within this area. The applicant would also coordinate with the City of Oakland to allow construction of a potential future bicycle pathway planned by the City of Oakland that would cross beneath the adjacent Park Street Bridge.

The new deck on the 2,522-square-foot pier would be used for public access as long as the applicant has a lease with the Corps of Engineers. The applicant proposes to install a 42-inch high railing and three gates that would be located between the public promenade and pier. The gates would be open during the day to provide three 30-foot openings and would be closed at night for security. No private uses are proposed for the pier. An existing floating dock would be replaced with a new private boat dock. The applicant's lease with the Corps requires that the boat dock cannot be provided for public use.

A 108-foot-long retaining wall would be constructed along the entire shoreline of the property to support the public promenade; it would be built entirely within the 100-foot shoreline band. The retaining wall would be comprised of 14-inch diameter concrete pilings with eight-foot centers driven approximately 25 feet deep. A two-inch by four-inch grade beam would be placed on the pilings to provide support for the concrete public promenade.

Type of Public Access	Square Feet	Shoreline Length (feet)
Phase 1		
New	5,336	87
Improved	0	0
Sub Total	5,336	87
Total Project		
Total	5,336	87

Schedule and Cost:

The project would begin construction in Fall 2013 and would be completed by Fall 2014. The total project cost is \$12,500,000.

Staff Analysis

- A. **Issues Raised:** The staff believes that the application raises two primary issues: (1) whether the proposed fill for the project is consistent with the McAteer-Petris Act and the Bay Plan policies on fill, including policies on safety of fills and sea level rise; and (2) whether the proposed public access improvements are consistent with the Bay Plan policies on public access, including policies on sea level rise and appearance, design, and scenic views.

1. **Bay Fill.** The Commission may allow fill only when it meets the requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part, that: (a) fill “should be limited to water-oriented uses (such as water-oriented recreation or public assembly) or “minor fill for improving shoreline appearance and public access”; (b) fill in the Bay should be approved only when “no alternative upland location” is available; (c) fill should be “the minimum amount necessary to achieve the purpose of the fill”; (d) “the nature, location, and extent of any fill should be such that it will minimize harmful effects to the Bay area, such as, the reduction or impairment of the volume, surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment...”; and (e) “fill should be authorized when the applicant has such valid title to the properties in question that he or she may fill them in the manner and for the uses to be approved.”
 - a. **Use.** The proposed project would involve the replacement of the decking and some support structures of an existing pile-supported pier in the Bay. The pile-supported pier would be used for public access and would improve shoreline appearance by replacing a fire-charred deck with an attractive new pier. The project would also include the installation of a new 650-square-foot floating boat dock for private use. This boat dock constitutes fill for water-oriented recreation, a water-oriented use under the McAteer-Petris Act.
 - b. **Alternative Upland Location.** The pier would provide unique views of the Oakland-Alameda Estuary, creating an opportunity rare along the nearby stretch of the Oakland waterfront for the public to walk out over the water and experience the Bay. The pier would increase access to and appreciation of the Bay for the public. The floating boat dock could not be constructed at an upland location. Therefore, there is no alternative upland location for the fill associated with this component of the project.
 - c. **Minimum Amount Necessary.** The proposed project would result in a total of 1,354 square feet of new pile-supported Bay fill. The applicant does not anticipate replacing any pilings on the existing pier. New fill would be limited to replacing the deck, strengthening the deck substructure where needed, and installing floating fill for a boat dock. The applicant states this is the minimum amount of fill necessary to provide attractive and desired public access to the Bay and to provide for a useable private boat dock at the site. The project would also result in a net increase in the Bay’s surface area because the new deck would be 194 square feet smaller and an existing 1,064-square-foot floating dock would be replaced with a 650-square-foot dock.
 - d. **Effects on Bay Resources.** Because the replacement deck and dock would cover 1,259 square feet less Bay surface area than the existing deck and dock, the proposed project would result in a slight increase in the Bay’s surface area and volume. On March 1, 2013, the San Francisco Bay Regional Water Quality Control Board issued a Water Quality Certification in which it determined that the proposed project would not have any significant impacts on San Francisco Bay water quality.
 - e. **Valid Title.** The project applicant holds legal title for the project site within the 100-foot shoreline band. The work at the terminus of 29th Avenue, owned by the City of Oakland, would be conducted pursuant to an encroachment permit issued by the City on July 2, 2013. The work in the Oakland-Alameda Estuary would take place on property owned by the Corps. The project applicant has a lease with the Corps for five years, renewable four times for a total of 25 years maximum for the rehabilitation and maintenance of the pier and floating boat dock.

- f. **Safety of Fills / Sea Level Rise.** The McAteer-Petris act requires “[t]hat public safety, and welfare require that fill be constructed in accordance with sound safety standards.” The project applicant provided a “Preliminary Structural Assessment” of the existing pier prepared by Renee A. Bravo, P.E. of Central Coast Engineers, Inc., dated March 28, 2012. The assessment recommended that the decking and lateral bracing be replaced, but that the joists, beams, and piles appeared to be “adequate to support pedestrian traffic.” The applicant states that the main supports for the decking meet current codes and regulations. The extent of the substructure work will not be verifiable until the decking is completely removed prior to replacement. With the replacement of the decking and some substructure repair, the reconstructed pier would meet public safety standards.

The Bay Plan policies on Safety of Fill state, in part, that “[a]dequate measures should be provided to prevent damage from sea level rise and storm activity that may occur on fill or near the shoreline over the expected life of a project.... New projects on fill or near the shoreline should...be built so the bottom floor level of structures will be above a 100-year flood elevation that takes future sea level rise into account for the expected life of the project.” The expected life of the pier and floating dock is limited by the Corps lease, which provides that the applicant may operate the pier and floating boat dock on Corps property for five years, with four possible five year extensions to a maximum of 25 years. Although the portion of the project on fill has a limited expected life, the applicant has provided sea level rise projections to 2100 relative to the pier, floating dock and public access areas (Exhibit G). In the event that the lease is extended or the applicant acquires title to the property beneath the pier and floating dock, the pier deck will stand above a mid-century estimate of 16-inches of rising sea level. At the end-of-century projection of 55-inches of sea level rise, it is likely the pier would be flooded. However, it is unlikely given the life of the pier and its pilings that the pier would exist that far into the future.

The Commission should determine whether the proposed project is consistent with the McAteer-Petris sections and relevant San Francisco Bay Plan policies regarding fill in the Bay.

2. **Public Access**

- a. **Maximum Feasible Public Access.** Section 66602 of the McAteer-Petris Act states, in part, that “...existing public access to the shoreline and waters of the...[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided.” In addition, the Bay Plan policies on public access state, in part, that “a proposed fill project should increase public access to the Bay to the maximum extent feasible...” and that “access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available.”

Currently, there is no public access to the Bay through or across the site. The site is fenced off and in dilapidated condition. The proposed project would create an 87-foot-long (2,351-square-foot) public access promenade paralleling the Oakland Estuary, ranging from 27 to 32 feet wide. It will run along the entire shoreline of the project site between the private residential patio and the pier area. The end of 29th Avenue along the shoreline, an undeveloped City Street, would be repaved and enhanced with bollards, landscaping, and sidewalks. The 2,522-square-foot pier would be reconstructed and guaranteed for public access. The new public promenade and enhancements to 29th Avenue would complete the Bay Trail connection

between the public access required by BCDC permits for the neighboring developments along the Oakland-Alameda Estuary and 29th Avenue and the Park Street Bridge. The public promenade would be surfaced with concrete and would be accessible for people with disabilities and suitable for pedestrians and bicycles.

The proposed private patio would be separated from the public promenade by seating and landscaping. These elements were added in response to Design Review Board's recommendations at the November 5, 2012 DRB review of the project. The Design Review Board members encouraged the project applicants to clearly delineate the public and private areas of the site.

The public access area and character proposed for this project corresponds with access provided with nearby projects. BCDC Permit No. M1999.004.01 for Waterpark Lofts, a three-building residential development totaling 27 units, located directly southeast of the Phoenix Commons site at 2875 Glascock Street in the City of Oakland, requires a 32-foot-wide public access area. BCDC Permit No. 2003.003.01, authorizing the nearby Signature Properties residential development at 2901 and 2909 Glascock Street in the City of Oakland, consisting of seven buildings totaling 100 units, requires a 45-foot-wide public access area. BCDC Permit No. 2003.004.00, authorizing the University of California Crew facility located at Glascock and Derby Avenue in the City of Oakland, requires a public access trail 45-feet in width. While the Phoenix Commons project provides less square-footage in permanent public access than these adjacent sites, the public access proposal is enhanced by the unique public access experience provided by the pier, which hopefully will exist and be available to the public for a long period of time, and the connections and improvements provided at the Bay end of 29th Avenue and to the Park Street Bridge.

As noted above, the 2,522-square-foot public access pier would include a 42-inch high railing and three gates. The gates would be open during the day to provide three 30-foot openings and would be closed at night for security. No private uses are proposed for the pier. The proposed pier would be guaranteed public access for as long as the applicant holds a lease over the pier, or obtains title to the underlying land. The currently deteriorated and unsafe pier would be reconstructed exclusively for public use, enhancing the public access over the Bay for this area of the Oakland waterfront.

- b. **Sea Level Rise.** The Bay Plan policies on Public Access include policies related to sea level rise. Public Access Policy 7 states, in part: "[a]ny public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby." The project applicant has provided sea level rise projections that show the impact over time on the public promenade (Exhibit G). The public promenade's elevation would assure that it would remain above flood elevations with a projected 16-inch sea level rise at mid-century. Using an end-of-century projection of 55-inches, however, the public promenade would be inundated by approximately one foot during high tide flood events.
- c. **Appearance, Design, and Scenic Views.** The Bay Plan Appearance, Design, and Scenic Views Policy 2 states, in part: "[a]ll Bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore."

The area of the proposed structure within the shoreline band would measure approximately 8,263 square feet. The residential structure would be four-stories high and its shoreline face would be between 46-52 feet high. Although there are currently views from Glascock Street to the Oakland-Alameda Estuary, these views

are blocked by a fence and diminished by the dilapidated condition of the site. Furthermore, since the site is closed to pedestrians there is no opportunity for views near the water. The proposed public promenade would enhance opportunities to view the Bay at the shoreline. In addition, the pier would provide unique views of the Oakland-Alameda Estuary that are not currently available from nearby sites along the waterfront, and, therefore, would enhance the public's appreciation and use of the Bay.

The Commission must determine whether the proposed project is consistent with the Bay Plan policies regarding public access and appearance, design and scenic views.

B. Review Boards

1. **Engineering Criteria Review Board.** The Commission's Engineering Criteria Review Board (ECRB) will not review the proposed project.
2. **Design Review Board.** The Design Review Board (DRB) reviewed the proposed project on November 5, 2012. The DRB expressed support for the proposed project. The Board recommended that the applicant provide a greater perception of separation between the private patio and the public promenade. The DRB stated they could accept the proposed railing between the promenade and the pier and indicated that obvious public access amenities should be considered for the pier area. The Board stated the applicant should agree to receive and plan for a future Bay Trail connection passing underneath the Park Street Bridge should this occur.

- C. **Environmental Review.** On September 19, 2012, the City of Oakland City Planning Commission certified that the project was categorically exempt from the requirement to prepare environmental documentation under the California Environmental Quality Act (CEQA) in part because the proposed project constitutes an "Infill Development Project" under Section 15332 of the CEQA Guidelines.

D. Relevant Portions of the McAteer-Petris Act

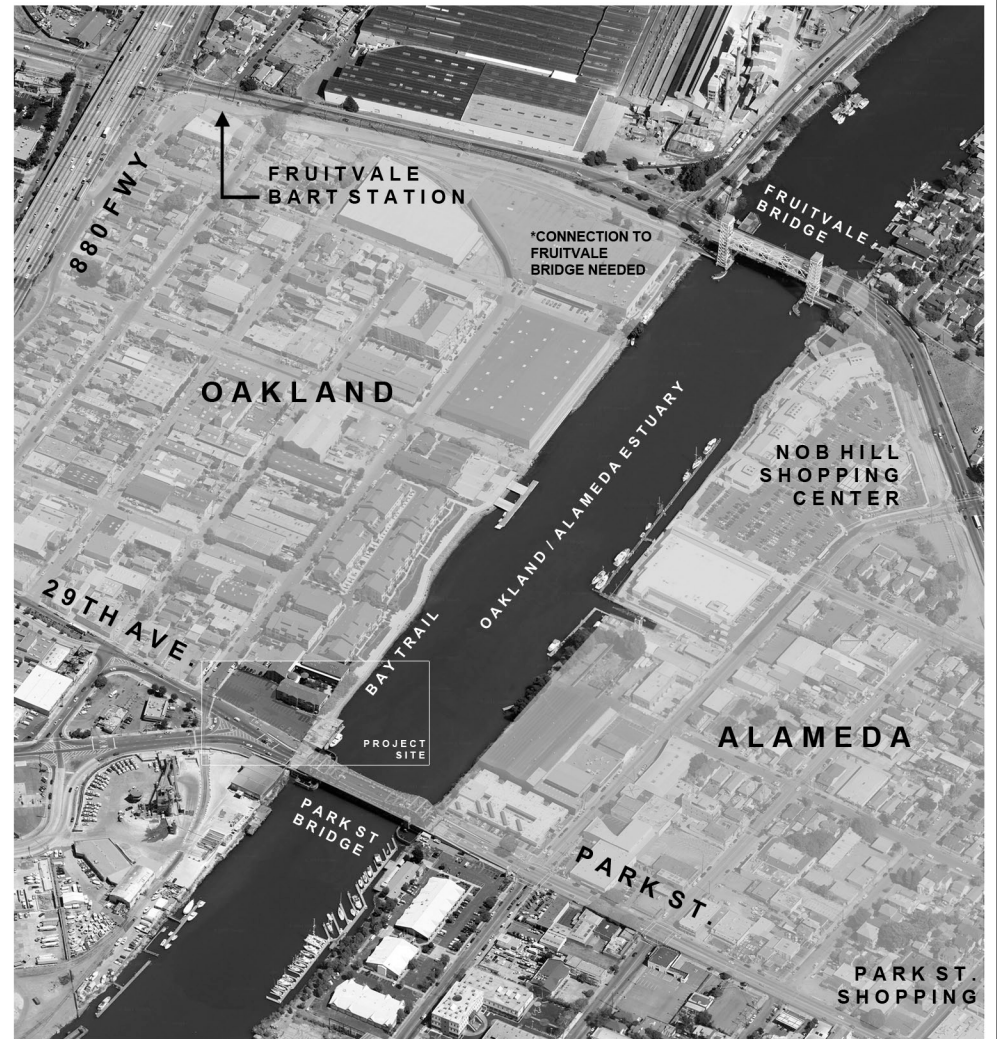
1. Section 66602
2. Section 66605
3. Section 66632

E. Relevant Portions of the San Francisco Bay Plan

1. *San Francisco Bay Plan* Policies on Safety of Fills
2. *San Francisco Bay Plan* Policies on Public Access
3. *San Francisco Bay Plan* Policies on Appearance, Design and Scenic Views

Exhibits

- A. **Vicinity Map**
- B. **Aerial View of Proposed Project**
- C. **South Elevation with Public Promenade**
- D. **View of Promenade Viewed from West**
- E. **Section of Pier and Public Promenade**
- F. **Public Access and Project Overview**
- G. **Sea Level Rise Projections**



Vicinity Map

PHOENIXCOMMONS BCDC APPLICATION

Senior Co-Housing Proposal
 340 29th Avenue Oakland, CA



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South elevation with public promenade



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View of public promenade looking west

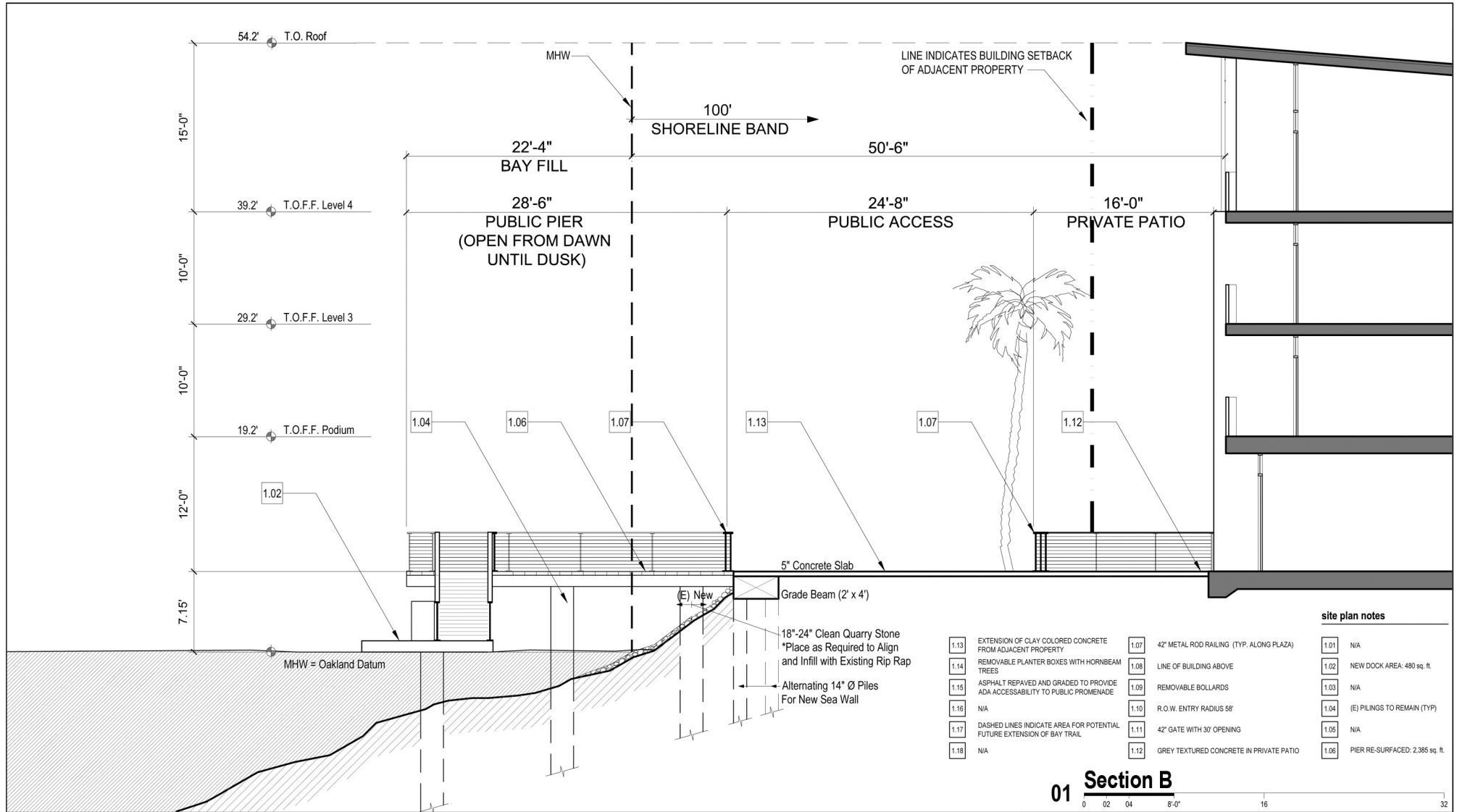


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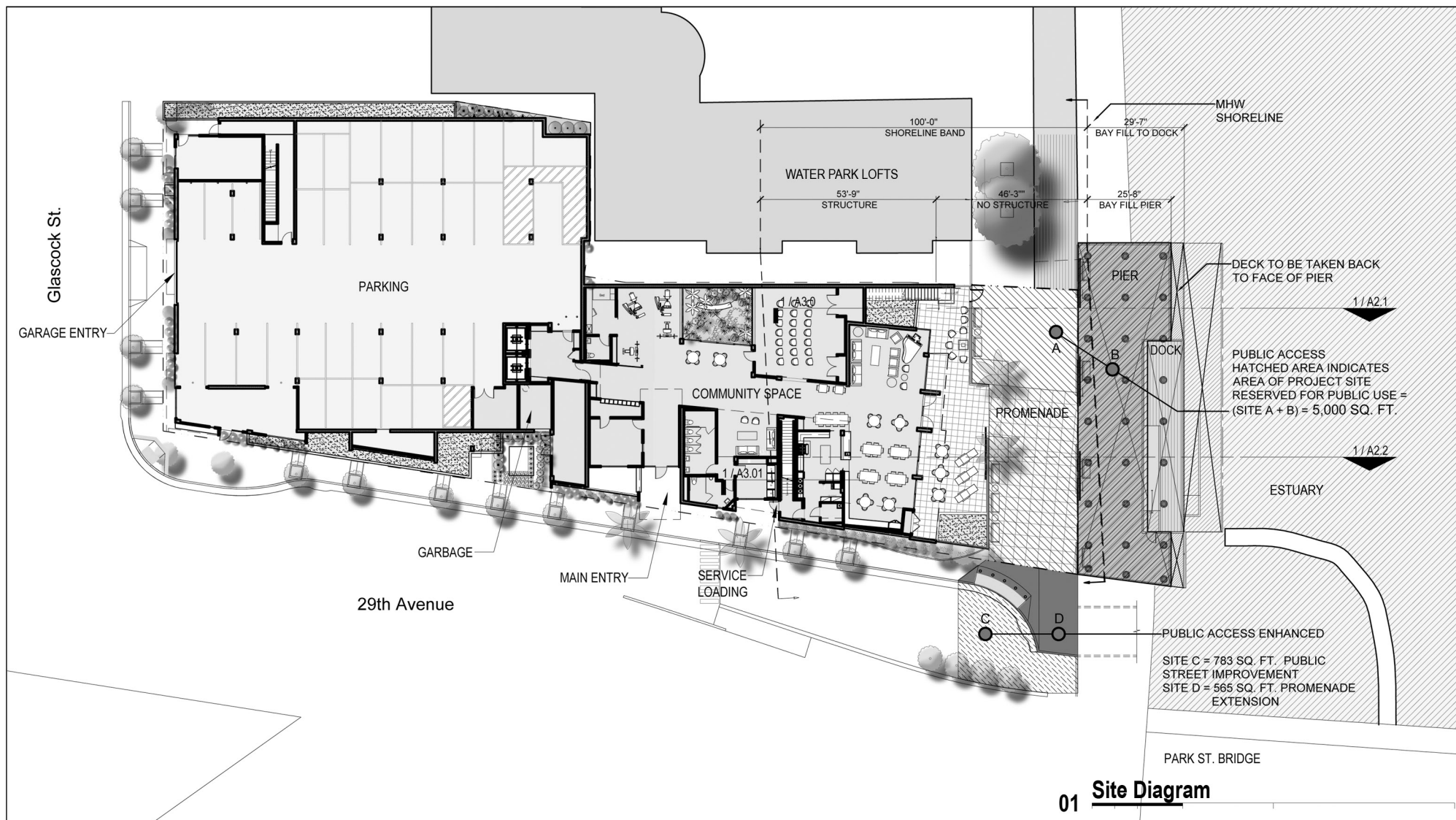


site plan notes

- | | | | | | |
|------|---|------|--|------|---------------------------------|
| 1.13 | EXTENSION OF CLAY COLORED CONCRETE FROM ADJACENT PROPERTY | 1.07 | 42" METAL ROD RAILING (TYP. ALONG PLAZA) | 1.01 | N/A |
| 1.14 | REMOVABLE PLANTER BOXES WITH HORNBEAM TREES | 1.08 | LINE OF BUILDING ABOVE | 1.02 | NEW DOCK AREA: 480 sq. ft. |
| 1.15 | ASPHALT REPAVED AND GRADED TO PROVIDE ADA ACCESSABILITY TO PUBLIC PROMENADE | 1.09 | REMOVABLE BOLLARDS | 1.03 | N/A |
| 1.16 | N/A | 1.10 | R.O.W. ENTRY RADIUS 58' | 1.04 | (E) PILINGS TO REMAIN (TYP) |
| 1.17 | DASHED LINES INDICATE AREA FOR POTENTIAL FUTURE EXTENSION OF BAY TRAIL | 1.11 | 42" GATE WITH 30' OPENING | 1.05 | N/A |
| 1.18 | N/A | 1.12 | GREY TEXTURED CONCRETE IN PRIVATE PATIO | 1.06 | PIER RE-SURFACED: 2,385 sq. ft. |

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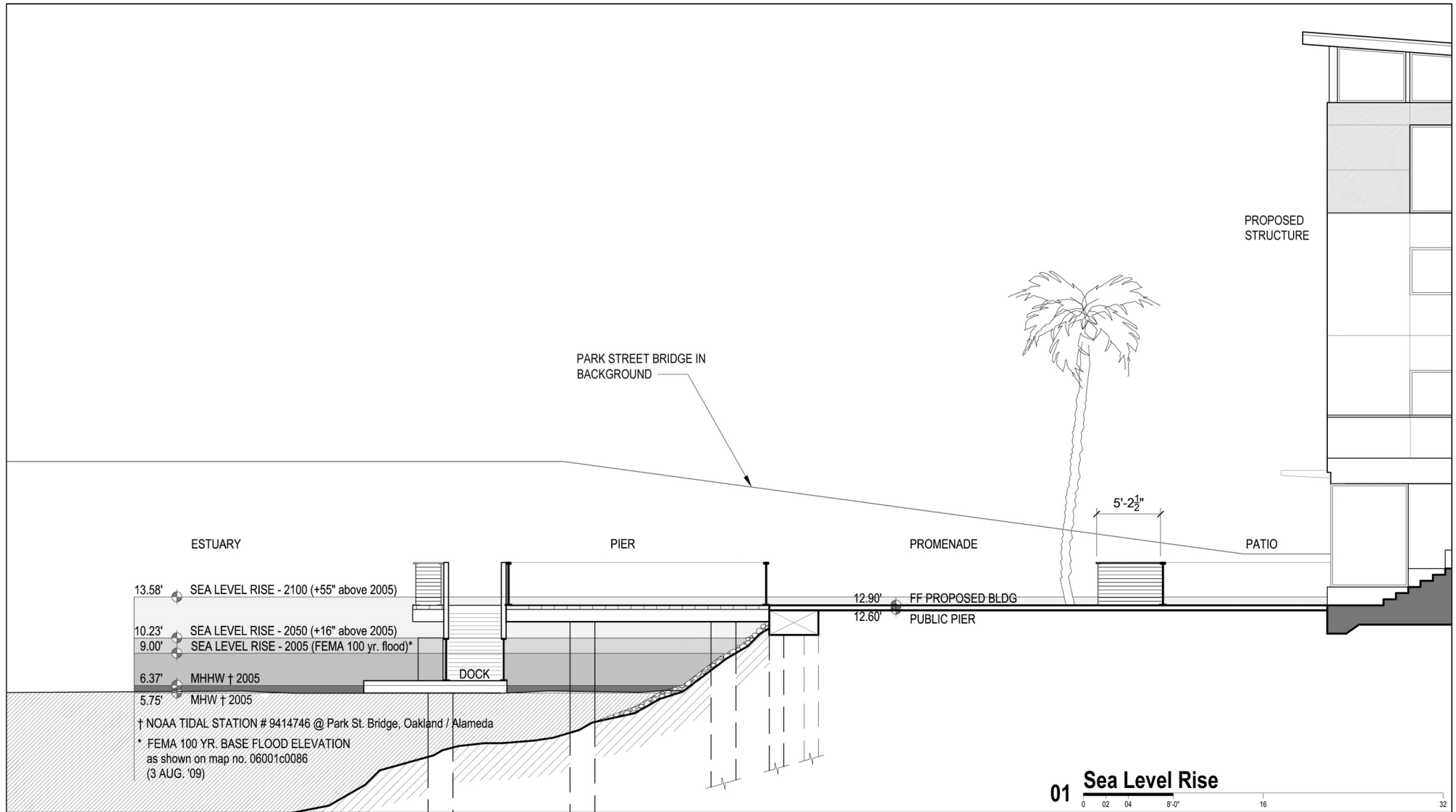


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